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*Attorneys for Defendant*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RATES TECHNOLOGY INC.,

Plaintiff,

v.

RCN CORPORATION

Defendant.

Civ. No. 09-CV-4445 (LTS)

**Filed Electronically**

**RCN'S NOTICE OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

**PLEASE TAKE NOTICE** that upon the accompanying Memorandum of Law, Defendant RCN Corporation ("RCN"), by and through its undersigned counsel, respectfully moves this Court, before the Honorable Laura Taylor Swain, United States District Judge, at the

United States District Court, Southern District of New York, 500 Pearl Street, New York, New York, on such day and at such time designated by the Court, for an order pursuant to Federal Rule of Civil Procedure 12(b)(6) dismissing this action for failure to state a claim upon which relief may be granted.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Judge Swain's Individual Practice Rule 2(B), RCN has used its best efforts to resolve informally the matters raised in its motion, including exchanging letters with opposing counsel outlining its respective legal positions and participating in a telephonic discussion on July 13, 2009 concerning the matters raised in this motion.

Respectfully submitted,

BINGHAM McCUTCHEN LLP

Dated: New York, New York.  
July 15, 2009

By: s/ Philip L. Blum  
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CIVIL ACTION NO. 09-CV-4445  
(LTS)

**CERTIFICATE OF SERVICE**

I, PHILIP L. BLUM, hereby certify under penalty of perjury that on July 15, 2009 I caused to be served **RCN's Notice of Motion to Dismiss Plaintiff's Complaint** and **Memorandum Of Law In Support Of Defendant RCN's Motion To Dismiss Plaintiff's Complaint Pursuant To Fed. R. Civ. P. 12(b)(6)**, by operation of the Court's Electronic Filing system upon the following counsel:

Robert L. Epstein, Esq.  
Epstein Drangel Bazerman & James LLP  
60 East 42nd Street, Suite 820  
New York, NY 10165

Dated: New York, New York  
July 15, 2009

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Philip L. Blum